RECEIVED

OCT - 3 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services | ) | WT Docket No. 96-162 |
| | ) | |
| Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934 | ) | DOCKET FILE COPY ORIGINAL |
| | ) | |
| Amendment of the Commission's Rules to Establish New Personal Communications Services | ) | GEN Docket No. 90-314 |
| | ) | |
| Requests of Bell Atlantic-NYNEX Mobile, Inc., and U.S. WEST, Inc., for Waiver of Section 22.903 of the Commission's Rules | ) | |

**COMMENTS OF**
**SBC COMMUNICATIONS INC.**

Respectfully Submitted,

SBC Communications, Inc.

Bruce E. Beard
Southwestern Bell Mobile Systems

Dated: October 3, 1996

# TABLE OF CONTENTS

## SUMMARY

The BOC cellular structural separation rules should be eliminated immediately and in their entirety. The rules are a relic from another time, prior to the Telecommunications Act of 1996, the Joint Cost Order and price cap regulation. The basis for the rules was to address concerns regarding cross-subsidization and potentials for discriminatory interconnection practices. The basis for the rule is no longer valid. As recognized by this Commission in deciding not to require structural separation rules for PCS-LEC operations, non-structural safeguards are a sufficient check against fears of alleged abuses. As the Commission recognizes, the structural separation rules result in costs and inefficiencies to the BOC cellular carriers, which costs are not imposed on their competitors. Continuing the application of the BOC cellular rules places such carriers at a competitive disadvantage and results in a regulatory windfall to those carriers against whom they compete. Such disparate treatment should be eliminated immediately.

If the Commission decides that interim structural separation is still required, then such interim measures should be strictly limited. Specifically, the Commission should assure that any measures do not infringe on the ability to compete, including the ability to provide one-stop shopping on one-stop service. Requirements such as separate staffing and officers, separate computer facilities and separate ownership of in-region landline facilities (i.e. as allowed in the Ameritech Waiver) should not be imposed. Additional CPNI and network disclosure statements and network disclosure rules likewise are not required. Any interim separation measures must be narrowly tailored with a rational explanation given as to why the BOC cellular carrier must be treated differently and forced to absorb the costs and inefficiencies of such measure.

The Commission should also reject any invitation to treat wireless carriers differently in regards to calls originating within their licensed territory and terminating outside such territory. Such calls, by Congressional mandate, are not subject to equal access provisions and are merely the completion of wireless calls. The fact that BOC affiliated carriers were previously required by judicial mandate to provide equal access to such calls does not change the fact that completion of the call is merely a part of providing the CMRS service. Any attempt to limit the ability of any wireless carrier, including BOC affiliated carriers, to carry a call originating on its network to the carrier on which it is to be terminated, whether interLATA or interstate, would be directly contrary to the Telecommunications Act of 1996.

Regulatory symmetry between all CMRS providers regardless of affiliation or size of affiliate should be adopted. Requiring certain groups of carriers to file detailed plans regarding how they will comply with the existing laws and regulations is an unnecessary and unfair regulatory hurdle. The penalties and negative stigma of a violation provide a sufficient incentive for compliance. Commission resources should not be wasted on having to review explanations of how a carrier plans to comply with existing laws. The filing of safeguard compliance plans is simply not warranted.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services | ) | WT Docket No. 96-162 |
| | ) | |
| Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934 | ) | |
| | ) | |
| Amendment of the Commission's Rules to Establish New Personal Communications Services | ) | GEN Docket No. 90-314 |
| | ) | |
| Requests of Bell Atlantic-NYNEX Mobile, Inc., and U.S. WEST, Inc., for Waiver of Section 22.903 of the Commission's Rules | ) | |

## COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on behalf of its subsidiaries Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Mobile Systems, Inc. ("SBMS"), files these Comments in response to the Commission's Notice of Proposed Rulemaking[1] regarding the continued application of structural separation requirements (47 CFR 22.903) for the provision of cellular services by Bell operating company (BOC) affiliates. The BOC cellular structural separation rules (hereinafter "structural separation rules") should be eliminated immediately and in their entirety.

---

[1] In the Matter of the Commission's Rules to Establish Competitive Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT 96-162, Notice of Proposed Rulemaking, Order on Remand , and Waiver Order (Released August 13, 1996). ("NPRM").

The structural separation rules are a relic of another time, prior to the Telecommunications Act of 1996, the Joint Cost Order [2] and price cap regulation.[3] The existing non-structural separation rules are more than sufficient to protect against the hypothetical "what-ifs" voiced by competitors who have their own reason for raising such concerns - - to continue their regulatory imposed competitive advantage. At the time the structural separation rules were adopted the Commission recognized that the rules imposed costs upon the BOCs that were not being imposed on their competitors. The Commission found, however, that BOCs would have "the financial resources to provide cellular service through structurally separate subsidiaries."[4] The Commission also noted that the rules should be reviewed within two years of the BOCs' compliance with the Computer II structural separation conditions - - yet the rules are still in place over a decade later.[5] The structural separation rules are an unnecessary regulatory and financial burden on the BOC cellular carriers and a regulatory windfall to those who compete against such carriers. The Commission should eliminate the structural separation requirements without delay and without imposing additional regulatory reporting burdens on any wireless provider or group of wireless providers.

---

[2] In the Matter of Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988).

[3] See, For example, In the Matter to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d 1275, Appendix B, FCC Policy Statement on Cellular Systems (1986).

[4] NPRM, para. 13.

[5] NPRM, paras. 38, 51 & fn. 19.

## I. SECTION 22.903 SHOULD BE ELIMINATED IN ITS ENTIRETY WITHOUT DELAY.

As the Commission notes, the structural separation requirements were intended to:

a) protect BOC local exchange ratepayers by preventing cross-subsidization of the more competitive cellular service; and

b) prevent discriminatory interconnection practices . . . by requiring that the wireline and non-wireline entities exist independently from one another with respect to facilities, operations, management and other personnel.[6]

The basis for imposing this structural separation is no longer valid. This Commission has already recognized that the cost allocation rules and affiliate transaction rules are sufficient to protect against cross-subsidization by local exchange carriers ("LECs"), including BOCs, in providing Personal Communication Services (PCS).[7] Likewise, the various interconnection rules, adopted since the promulgation of the structural separation rules, have likewise been deemed sufficient to protect against discriminatory treatment in integrated PCS-LEC operations.[8] The Commission has also recognized that its price cap rules have severed the link between higher costs and increased prices such that cross-subsidy at the expense of ratepayers is not a material concern.[9] Yet despite the Commission's recognition of the lack of any basis for the rules, the NPRM suggests that disparate treatment of BOC cellular affiliates might still be retained, either temporarily

---

[6]NPRM, para. 37.

[7]See, NPRM, para. 15. See also, Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket 90-314, Second Report and Order, 8 FCC Rcd 7700, paras. 112-127.

[8]Id.

[9]See, Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313. 5FCC Rcd., 6786, Para. 2, 35

until the BOC is authorized to provide interLATA service in region, or, for the long-term in the form of "general streamlined requirements" imposed on all Tier 1 LECs. There exists no basis for tying relief from Section 22.903 with the checklist provisions of the Telecommunications Act of 1996. Moreover, disparate regulatory treatment of CMRS of providers is contrary to the Congressional intent of the Omnibus Budget Reconciliation Act of 1993 ("OBRA") and the various Orders of this Commission implementing OBRA. Neither the continuation of the structural separation rules nor the imposition of additional non-structural safeguards are justified. Either alternative could result in unnecessary costs to the affected CMRS carrier without any corresponding competitive benefit.

Concerns that a BOC may somehow "favor" its cellular affiliate, discriminate against other CMRS providers or otherwise act in an anti-competitive manner are unjustified by any reasonable theory or by actual market experience. There is simply no history of actual complaints or claims of such discrimination or anti-competitive behavior. The same opportunities and incentives for abuses are there for all LEC-PCS integration or any type integration. Likewise, non-BOC LECs with cellular affiliates have had the same opportunities for over a decade, and yet abuses did not occur. For example, GTE which is one of the nation's largest local exchange companies and the nation's fourth largest cellular carrier has operated without structural separation rules and without any complaint of cross-subsidization or discrimination.[10] The same is true for Sprint which until the recent spin-off of its cellular operation, owned expansive landline and cellular assets. If the likelihood of such conduct were of actual concern, would AT&T have spent the money it did to

[10]The Wireless Marketplace, Cellular Telephone Industry Association (Spring 1996).

purchase the McCaw operations knowing that they would be competing against BOC and non-BOC LEC cellular affiliates in every market where McCaw operated.[11] If concerns over cross-subsidies and discrimination were real, would SBC and other BOCs with large out-of-region systems competing against an in-region BOC cellular affiliates be advocating elimination of the rules? SBC's cellular affiliate for example, competes against an in-region BOC affiliated cellular company in 5 of its 7 largest cellular markets, including its 3 largest markets and yet is not concerned that elimination of these rules will lead to any such abuses. Indeed, nearly two-thirds of SBC's cellular POP's and customers are located in these "out-of-region" markets.

Integrated operations in and of themselves do not create a greater likelihood that an entity will violate Commission rules or the antitrust laws, nor does the fact that a BOC or LEC is involved create a greater likelihood.[12] With price cap regulation, cross-subsidy issues are no longer a material concern. To the extent a BOC or LEC is still subject to rate-of-return regulation, or the sharing obligation under price cap regulation, the affiliate transaction and cost allocation rules and other accounting safeguards serve as a more than adequate check on identifying and preventing any cross subsidization concerns. Likewise, the interconnection rules serve as a check on discriminatory treatment issues with regard to network services. Abuses such as delays or poor service will be readily identifiable, will be reported swiftly by competitors and will receive appropriate and immediate attention at the state or federal level. Indeed, it is this likelihood of detection, with its consequent prophylactic effects which led this Commission to impose such rules. There is no reason

[11]McCaw owned only A-Band cellular licenses.

[12]<u>See</u>, <u>NPRM</u>, para 49.

to impose the costs and inefficiencies of the structural separation rules on the BOC affiliated cellular carriers when the basis for the rules (i.e. that competitors argue might occur to prevent cross-subsidization and discriminatory treatment that competitors argue "might" occur) can be addressed via existing or streamlined non-structural safeguards.

### A. The Costs and Inefficiencies Associated With the Structural Separation Rules Mandate the Immediate Elimination of 22.903

The Commission recognized at the time that structural separation was first imposed that the rules would result in costs to the affected carriers in the form of lost efficiencies of scope in terms of personnel and operations and "lost opportunities for customers to obtain integrated and innovative service packages."[13] The Commission also noted that the costs and inefficiencies imposed on the BOCs are costs and burdens not borne by other CMRS participants, but stated they felt the BOCs could afford such costs.[14] The ability of a carrier to absorb a cost is not a legitimate reason for imposing such cost, especially in a competitive market such as wireless. Regulatory symmetry, not disparate regulatory treatment should be the rule. Any costs or inefficiencies due to regulation should be the same for all CMRS providers.

The Commission states that the new Federal Legislation has removed a "principal" cost by allowing joint marketing and sale of landline and CMRS service.[15] While the Act's joint marketing provisions of the Telecommunications Act gives BOCs some relief, compliance with the remainder of the structural separation rules continues to place costs and burdens on the BOC cellular

---

[13] NPRM, paras. 38, 51.

[14] NPRM, paras. 3, 38, 51.

[15] NPRM, para. 51.

affiliates which are not borne by other CMRS providers. The costs and lack of efficiencies associated with structural separation likewise affects consumers.

This Commission has consistently praised the consumer benefits of one-stop shopping. For example, in granting the transfer of the McCaw licenses to AT&T the Commission noted that "the benefits of one-stop shopping" are substantial.[16] The Commission likewise acknowledged the value of integrated operations noting that the:

> ability of a customer, especially a customer who has little or infrequent contact with service providers, to have one point of contact with a provider of multiple services is efficient and avoids the customer confusion that would result from having to contact various departments within an integrated, multi-service telecommunications company, such as AT&T/McCaw, to obtain information about the various services AT&T/McCaw provides.[17]

Customers do not just want "one-stop shopping" they want "one-stop service." Customers want a single point of contact for maintenance, repair, billing and any other matter that may arise from their relationship with the carrier for the various services offered. Carriers such as MCI are already promoting the ability to provide such one-stop service through its MCI One bundling of services.[18]

The Commission seemingly recognizes the consumer desire for one-stop service in acknowledging that the core structural safeguards should not be expanded to prohibit joint billing. The inefficiencies and competitive disadvantages of any other conclusion is demonstrated by the fact

---

[16]In Re Application of Craig O. McCaw, Transferor and American Telephone and Telegraph Company, Transferee, for Consent to Transfer Control of McCaw Cellular Communications, Inc and its Subsidiaries, File Nos. ENF-93-44 and 05 288-CH-TC-1-93, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11786, para. 15 (1995).

[17]Id.

[18]See, Wall Street Journal, "MCI Unveils a Service that Packages Wide Range of Offerings to Consumers" April 30, 1996, p. B-9.

that a contrary result would mean that the BOC cellular affiliate customer might be forced to call multiple customer service numbers whereas competitors could offer a single number. Likewise, the customer would receive multiple bills depending on the services purchased (local service, customer premises equipment, cellular service, voice mail, paging, etc.) whereas its competitors are already offering such services on a single bill.[19]

Inefficiencies and additional costs also result from the inability to have integrated customer service, maintenance and repair staffs and even officers. As this Commission recognized in granting SBMS' initial waiver for out-of- region relief, combining operational tasks such as credit confirmation, billing and collection, customer service and sharing installation, maintenance and repair personnel offers "substantial benefits to consumers by avoiding duplicate costs, increasing efficiency and enhancing SBMS's ability to provide innovative service."[20] Such inefficiencies and reliance on multiple points of contact within its region place a BOC at a distinct competitive disadvantage. As one analyst has noted "the way you win a customer is to offer simplicity with a bundle of services and one bill from one company."[21]

Competitors of the BOC affiliated cellular carriers are predictably anxious to see the structural separation requirements imposed for as long as possible, presumably because the costs and inefficiencies associated with such separation give them a competitive advantage over the BOC cellular carrier--a competitive advantage that is purely a function of asymmetric regulation.

---

[19]Id.

[20]In the Matter of Motion of Southwestern Bell Mobile Systems, Inc. For a Declaratory Ruling, CWD 95-5, Memorandum Opinion and Order, para.19 (Released October 25, 1996).

[21]See, Wall Street MCI Article, infra.

Likewise, competitors of the Tier 1 LEC CMRS affiliates are presumably anxious to have additional regulatory hurdles placed on such affiliates for similar reasons. Again, the existing non-structural safeguards provide a more than sufficient basis for protecting against cross-subsidization or discriminatory behavior. Continued application of the structural separation rules or the imposition of rules on LEC affiliates based on a perceived need to protect against a "leveraging of market power" by the LEC or as a means to balance competition by imposing costs and regulatory burdens on some competitors but not on others, is unsound regulatory policy.[22] Such a policy is unsound because there is no showing that such "protection" of competitors is needed. There is absolutely no evidence to indicate that imposing such regulatory costs and burdens on SBMS is necessary to enable, for example, AT&T, the largest wireless operator and largest interexchange carrier in the country, to compete against SBMS in the Dallas cellular market. None. In fact, prior to the AT&T/McCaw merger, McCaw proclaimed neutrality on the issue noting that "this relief is meaningless to McCaw and all other non-(Bell) cellular carriers."[23] Likewise, SBC is not concerned about competing out-of-region against existing in-region BOC affiliated cellular carriers.

Imposing such inefficiencies and costs on the BOC cellular operations is simply unjustified, especially given the Commission's recognition in the Broadband PCS Order that existing non-structural safeguards are appropriate for LEC-PCS integration. The wireless market is competitive, and various competitors are already promoting the concept of one-stop service. BOC cellular companies should not be hamstrung by the costs and inefficiencies associated with the

---

[22]See, NPRM, paras. 47-49.

[23]Comments of McCaw Cellular Communications, Inc., GN Docket 90-314, November 2, 1992 at Page 47.

structural separation rules. The Commission should eliminate the structural separation requirements of 22.903 without delay.

## II. SHOULD THE COMMISSION DETERMINE THAT STRUCTURAL SEPARATION IS NECESSARY, INTERIM PROVISIONS SHOULD BE STRICTLY LIMITED.

The NPRM requests comments on whether there should be (1) a transitional period wherein a streamlined Section 22.903 would be in effect until a set sunset date, or (2) immediate elimination of 22.903, which would be replaced by a set of uniform safeguards based on the PacTel PCS filing.[24] For the reasons stated above, the Commission should adopt the second option, but without mandating the additional uniform safeguards. Instead, the Commission should delete 22.903 in its entirety and rely on the existing or preferably streamlined non-structural safeguards.

If a transitional period is adopted, certain modifications should be adopted to lessen the inefficiencies and costs imposed on BOC cellular providers. The following changes and clarifications are required.

### A. A BOC Cellular Affiliate Should be Allowed Ownership of In-Region Land-line Facilities not Related to LEC Operations and To Share Computer Facilities.

SBC agrees with the Commission's determination that Section 22.903 should be modified consistent with the Ameritech ACI Waiver[25] to allow a BOC cellular affiliate to own

[24]NPRM, paras. 80-83.

[25]In the Matter of Ameritech Communications, Inc. For a Partial Waiver of Section 22.903 of the Commissions Rules, CWD 95-14, Memorandum Report and Order (Released August 22, 1996).

facilities for the provision of landline services, including competitive landline local exchange (CLLE) and interexchange services.[26] The recent granting of the ACI waiver supports the Commission's conclusion.

The Commission should also eliminate Section 22.903(b)(4) requiring the utilization of separate computer facilities. Prohibiting the joint use of BOC computer facilities places the BOC cellular companies at a competitive disadvantage. The sharing of computer facilities is many times merely a sharing of space or capacity. The non-structural safeguards protect against cross-subsidization. Not allowing joint-use of BOC computer facilities precludes the BOCs from relying on the same efficiencies its competitors enjoy.

## B. The Term "Joint Marketing" should be Defined Broadly

The Commission's conclusion that Section 601(d) of the 1996 Act allowing "joint marketing" was meant to be self-executing is correct. The definition of joint marketing is to be read broadly so as to allow BOCs to implement the one-stop shopping that was a basis for the provision.[27] Such definition should include the ability to provide a single point of contact for all customer service, installation and repair needs.[28] Such activities are an essential part of one stop shopping--customers want not only a single point for purchase but a single point of contact for service and other needs resulting from the purchase. The clear legislative intent of the joint marketing provision was

---

[26]NPRM, para. 59.

[27]See, NPRM, paras 63-64.

[28]See, NPRM, para. 68.

to provide BOCs with sufficient relief to permit them to offer one-stop shopping. The Commission should not define "joint marketing" in a way that contradicts the legislative intent by prohibiting the BOCs from matching their competitors who are already offering integrated packages with a single contact. As the NPRM notes, such transactions performed on behalf of the cellular affiliate would be subject to the cost allocation and affiliate transaction rules. These rules are more than sufficient, especially in light of price cap regulation, to assure that CMRS services are not subsidized at the expense of the LEC's regulated service ratepayers.[29]

## C. Separate Staffing Requirements Should be Eliminated

Any transitional retention of 22.903 should also include an elimination of the requirement that the separate corporations maintain separate officers and personnel. Such a restriction places BOCs at a significant disadvantage, especially if they have both in-region cellular and PCS licenses. The separate staffing requirements promotes inefficiency by requiring duplication of tasks. A prime example of the inefficiency of the joint staffing rules is demonstrated by SBC's PCS operations in Tulsa. The Commission rules allow integration between the PCS and LEC operations or PCS and cellular operations. However, if SBC's PCS operations are to take advantage of the benefits the Commission envisioned by integrating LEC and PCS operations, it cannot rely on shared employees or officers with SBMS. Rather, SBC would be forced to move such key wireless employees strictly to the PCS or SWBT operation. SBMS should not be required to make such a choice.

---

[29] Whether even these non-structural accounting safeguards are necessary is the subject of debate in the accounting safeguards NPRM, CC Docket No. 96-150. As SBC explained there, these safeguards should be streamlined to minimize the burden of regulations that are not necessary to accomplish their intended purpose.

If the structural separation rules are retained for a transitional period, then 22.903(b)(2) requiring separate officers and 22.903(b)(3) requiring separate operating, marketing, installation and maintenance personnel should be eliminated so as to lessen the inefficiencies associated with such rules.

## D. Rules Regarding CPNI and Network Disclosure Should be Eliminated Because They are Superfluous

The NPRM also requests comments on the continued applicability of 22.903(f) of the Commission's rules regarding the sharing of customer proprietary network information ("CPNI"). Section 22.903(f) prohibits the BOC from sharing such information with the cellular affiliate unless such information is publicly available on the same terms and conditions. Section 222 of the Telecommunications Act includes comprehensive CPNI provisions. The customer's options contained in Section 222 should be the proper focus of CPNI questions. Thus, Section 22.903(f) should be eliminated as being superfluous.[30] There is no reason to have differing rules regarding the same issues. Thus, if Section 22.903(f) does survive then it should be interpreted in a manner which does not dilute a customer's choice regarding CPNI use - - it should be read consistent with Section 222. In other words, a customer's decision pursuant to Section 222 that CPNI could be shared with an affiliate of the BOC should not require the BOC to make the CPNI publicly available, or available to others, where the customer has not made an affirmative written request to do so, pursuant to Section 222(c)(2).

The Commission's tentative conclusion that there is no need for a Part 22 rule

[30]NPRM, para. 72.

regarding network information disclosure is also correct.[31] The existing network disclosure rules are adequate.

### E. BOC Provision of Incidental InterLATA CMRS is Unrelated to the Issues Surrounding Elimination of 22.903

The NPRM questions whether Section 271 of the Telecommunications Act, which allows BOC provision of interLATA commercial mobile radio service (CMRS), and Section 332(c)(8), which provides that CMRS providers are not required to provide equal access for the provision of toll service, limit the Commission's authority to retain current BOC cellular separation rules or to prescribe alternative rules.[32] The authorizations do not bear upon the question of the retention or elimination of 22.903.[33] The completion of such calls is a part of the provision of the wireless service just as it is for every other CMRS provider. Any attempt to limit a BOC-affiliated provider's authority under the guise of an "alternative competitive safeguard rule" would be contrary to the Telecommunications Act .

In implementing the Omnibus Budget Reconciliation Act of 1993, the Commission determined that it would forebear from all active forms of rate regulation for CMRS and specifically forbid CMRS providers from filing tariffs for interstate CMRS.[34] The Commission specifically

---

[31]NPRM, paras. 72-76.

[32]See, NPRM, paras. 84-86.

[33]See, NPRM, para. 84.

[34]In the Matter of Implementation of Sections 3(n) and 322 of the Communications Act: Regulatory Treatment of Mobile Services, 9 FCC Rcd. 1411, at paras. 164-218, Second Report and Order (1994).

noted that "we will forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers."[35] The Commission likewise has denied state petitions to impose entry requirements or rate regulations on intrastate CMRS providers. Thus, prior to the new Act, there were no federal or state entry or rate regulation requirements applicable to either intrastate or interstate CMRS, other than the basic common carrier obligations and enforcement mechanisms and the continuing authority of states to regulate "other terms and conditions" of intrastate CMRS.[36] The only exception was that BOC affiliated CMRS providers were subject to the judicially mandated equal access and interLATA restrictions of the Modified Final Judgement (MFJ). The Commission, in Docket 94-54, was considering whether it would be in the public interest to subject other CMRS carriers to equal access provisions. The issue however was decided by the Telecommunications Act which provides that no CMRS provider shall be required to provide equal access.[37] Thus, there continue to be no federal or state entry or rate regulation requirements applicable to either interstate CMRS or intrastate CMRS - - it is merely the provision of CMRS. A CMRS provider is simply delivering a wireless call that originates on its network to the carrier on whose network it is terminating - - it is merely the completion of a wireless call. A CMRS provider is not subject to rate regulation or entry requirements regardless of where the call originates on its network or where the call is being terminated. The new legislative provisions prohibiting the imposition of CMRS equal access obligations and removing interLATA restrictions on in-region BOC CMRS providers simply

[35] Id., para. 178.

[36] Id., paras. 164-218.

[37] See, 47 U.S.C. 332(c)(8)

does not bear on the question of elimination or retention of Section 22.903 other than to reinforce Congress' intent to further regulatory parity among CMRS providers.

## III. REGULATORY SYMMETRY IS REQUIRED BETWEEN ALL CMRS PROVIDERS REGARDLESS OF AFFILIATION OR SIZE OF AFFILIATE.

As the NPRM notes, a major criticism of the structural separation rules is that they are applicable only to BOC-affiliated cellular carriers.[18] The NPRM proposes to continue disparate treatment of CMRS providers by increasing the regulatory burdens on Tier 1 LEC- affiliated CMRS providers and possibly continuing the structural separation requirements on BOC cellular operations. Such disparate treatment between CMRS providers is contrary to the congressional intent of the Omnibus Budget Reconciliation Act of 1993, the Commission Orders implementing it, and to the competitive intent of the Telecommunications Act. The Commission should reject proposals to treat CMRS providers differently based on an affiliation or affiliate size. Any regulatory costs forced upon one carrier that are not forced on its competitors places the more regulated carrier at a competitive disadvantage.

The Commission needs to immediately eliminate Section 22.903 and place BOC cellular service in regulatory symmetry with all other cellular providers and all PCS providers. There is no basis for treating cellular differently than PCS--they are the same. As SBC established in a recent ex parte presentation: 1) the network functions are identical; 2) vendors recognize that the services are identical; 3) the services are viewed as identical by the industry; 4) the carriers compete for the

---

[18] See, NPRM, para. 87.

same customers; and 5) the Commission has indicated that the services are identical.[39] As the United States Circuit Court of Appeals for the Sixth Circuit queried:

> If (PCS) and Cellular are sufficiently similar to warrant the Cellular eligibility restrictions and are expected to compete for customers on price, quality and services . . . what difference between the two services justifies keeping the structural separation rule intact for Bell Cellular providers?[40]

The simple fact remains that the two services are identical, and there is no justification or difference for treating the services differently. Differing rules lead to absurd results. For example, one county in Oklahoma lies both within SBMS's licensed cellular service area and the Tulsa MTA for which SBMS holds the PCS license. Thus, in the one county, the rules applicable to SBMS' operations are different depending only on the spectrum frequency being used. For the one county, SBMS would be allowed to integrate its PCS operations with SWBT but would be prohibited from integrating SBMS' cellular service. As the United States Circuit Court for the Sixth Circuit noted "the time is now" for reconsideration of the structural separation rules and time "is of the essence" because the rules "will prevent the Bell Companies from competing with Personal Communication Service providers on a level playing field.[41] The same rules that apply to integration of PCS operations with LEC operations should apply to integration of cellular operations and LEC operations.

The Commission however should not use the need for regulatory symmetry to increase the burdens on other CMRS providers. The existing non-structural safeguards and

---

[39]See, Ex Parte Letter and attachments from Rick Firestone, on behalf of SBC Communications, Inc and Southwestern Bell Mobile Systems, dated December 15, 1995 to Ms. Rosalind Allen, Wireless Telecommunications Bureau.

[40]Cincinnati Bell Telephone v. FCC, 69 F3d 752 (6th Cir. 1995).

[41]Id.

interconnection rules are sufficient competitive safeguards. Additional safeguards such as those proposed for Tier 1 LECs, based on the PacTel filing, are not warranted. Price cap regulation (which allows the Commission to control the input price to competitors) and competition serve as checks on cross subsidization. In addition, such carriers are still subject to compliance with the affiliate transaction and cost allocation rules. Such rules are more than sufficient to guard against cross-subsidization. Current rules require provision of the costing methodology associated with any integration of services to be included in a Tier 1 LEC's Cost Allocation Manual. Likewise, the CAM lists all the various affiliates. All carriers are required to comply with the CPNI requirements and the network disclosure requirements as a matter of law. Filing a report detailing how such compliance is occurring, absent a complaint is superfluous. Forcing carriers to compile, file and periodically update plans which merely recite and detail compliance with existing laws is an inefficient use of carrier resources and an inefficient use of Commission resources in reviewing and approving such plans.

The simple fact is that the Commission does not need detailed plans from carriers regarding how they plan to comply with various laws, the Uniform System of Accounts and other regulations, because the penalties for non-compliance provide enough of an incentive for compliance. The same rationale is true of the incumbent LEC obligation to provide network disclosure pursuant to Section 251(c)(5). The penalties associated with non-compliance provide an additional strong incentive for compliance. Under the circumstances, Commission resources certainty can be put to better uses than reviewing and approving plans for compliance with existing laws.

The proposed non-structural safeguard plans for in-region provision of CMRS by Tier

1 LECs is simply an unneeded effort that will merely waste precious Commission resources. Compliance with existing laws and regulations can be inferred by the penalties and public relation stigma associated with non-compliance.

If the Commission nevertheless requires such filings then, as a matter of regulatory symmetry, they should be filed by all CMRS providers with a landline affiliation.

## CONCLUSION.

For the reasons stated herein the Commission should eliminate the structural separation requirements of 22.903 immediately. The existing non-structural separation safeguards are more than sufficient checks on cross-subsidization, discriminatory treatment and compliance with existing laws and regulations. The filing of safeguard compliance plans is simply not warranted.

October 3, 1996

Respectfully Submitted,

SBC Communications, Inc.

By: ______________________________


Bruce E. Beard
Southwestern Bell Mobile Systems, Inc.
13075 Manchester Rd., Suite 100N
St. Louis, Missouri 63131

James D. Ellis
Robert Lynch
Wayne Watts
David Brown
SBC Communications, Inc.
175 East Houston
San Antonio, Texas 78205

Durward D. Dupre
Mary Marks
Darryl Howard
Jonathan Royston
Southwestern Bell Telephone Company
One Bell Center
St. Louis, Missouri 63101

Glen Glass
Carol Tacker
Southwestern Bell Mobile Systems, Inc.
17330 Preston Road, Suite 100A
Dallas, Texas 75252